BEFORE THE
TENNESSEE STATE BOARD OF EQUALIZATION

In Re:	Lawrenceburg Redevelopment Partners, LLC District 8, Map 78C, Group C, Control Map 78C, Parcel 1 Industrial Property Tax Year 2006	)))))	Lawrence County

INITIAL DECISION AND ORDER

Statement of the Case

The Lawrence County Assessor of Property ("Assessor") valued the subject property for tax purposes as follows:

LAND VALUE	IMPROVEMENT VALUE	TOTAL VALUE	ASSESSMENT
$815,200	$24,295,300	$25,110,500	$10,044,200

On February 28, 2007, the State Board of Equalization ("State Board") received an appeal on behalf of Lawrenceburg Redevelopment Partners, LLC ("LRP"), the current owner of the property in question. As indicated on the appeal form, this property was not appealed to the Lawrence County Board of Equalization ("county board") during its 2006 session.

On June 11, 2007, the undersigned administrative judge entered an order granting a petition for intervention by the State Division of Property Assessments (DPA). The Assessor and DPA filed a motion to dismiss this appeal on July 6, 2007.

The undersigned administrative judge conducted a jurisdictional hearing of this matter on August 15, 2007 in Lawrenceburg. LRP was represented by attorneys Samuel B. Zeigler and Garry K. Grooms, of Stites & Harbison, PLLC (Nashville). DPA attorney Robert T. Lee appeared on its behalf and assisted the Assessor.

Findings of Fact and Conclusions of Law

This appeal pertains to a huge manufacturing plant in the city of Lawrenceburg that was formerly owned and occupied by Murray, Inc. ("Murray"). In November, 2004, Murray initiated a "Chapter 11" bankruptcy proceeding. This facility, which had once employed as many as 4,000 persons, closed during the following year.

On December 20, 2005, an entity known as Tennessee Real Estate Holdings, Inc. ("TREH") acquired the subject property at a foreclosure sale for the minimum bid of $7,000,000.[1] Lawrence County Chamber of Commerce president Randy Brewer, who spearheaded efforts to locate a buyer who would restore this property to productive use, met with representatives of an interested party called Pinnacle Properties Management Group, LLC ("Pinnacle"). According to Mr. Brewer's affidavit:

[1]TREH was apparently affiliated with the holder of a deed of trust on the property.

> ...[D]uring our discussions, one of the major selling points that we made to Pinnacle was the anticipated willingness of the Lawrence County Industrial Development Board to approve a tax abatement program involving industrial bond financing coupled with a payment in lieu of tax agreement ("PILOT Agreement") that would result in a tax abatement for several years following the purchase.

Affidavit of Randy Brewer, paragraph 8.

At a special called meeting on March 28, 2006, the Industrial Development Board of the City of Lawrenceburg ("IDB") adopted a motion that:

> [I]in the event Lawrenceburg Redevelopment Partners (a special-purpose limited liability company created by Pinnacle to purchase the subject property) becomes eligible for a (PILOT Agreement) by having some sort of bond financing or transfer of the property to the IDB of the City of Lawrenceburg, that the IDB would approve an "in lieu of tax agreement" for 5 years of tax abatement in full with the final 5 years to be graduated at 20% per year.

IDB Meeting Minutes, p. 2.

With this key inducement in hand, LRP purchased the subject property three days later for $9,900,000 – less than 40% of the amount at which it had been valued since the last county-wide reappraisal in 2004.[2] Mr. Goff recalled that, after the closing of this transaction:

> ...I continued to work under the direction of the ownership group to obtain industrial bond financing to cover the initial acquisition and further development costs of the Property in order to implement the PILOT program approved by the Board.
>
> During my discussions with Randy Brewer and other city and county officials, it was my understanding (and the understanding of other Pinnacle representatives involved in the process) that LRP had until the end of 2006 in order to obtain bond financing for the project. I understood that if we obtained bond financing before the end of 2006, we would owe no taxes on the Property. Because the PILOT program had been approved, and Pinnacle believed that it would have bond financing in place before the end of 2006, it never even considered challenging the appraisal of the Property, nor was it ever communicated otherwise.

Affidavit of Barry Goff, paragraphs 7 and 8.

As Mr. Zeigler acknowledged at the hearing, Mr. Goff's assumption that the procurement of bond financing by the end of 2006 would effectively preclude any property tax liability for that year was "incorrect."[3] Mr. Brewer, for his part, was "not aware of any procedure or deadline for challenging the appraisal to the County Board of Equalization." Affidavit of Randy Brewer, paragraph 13. However, "based on discussions I had with the Lawrence County Tax Assessor in connection with this Property, I understood that any challenge to the appraisal on this Property would not be addressed to or decided at the county level, but would be appealed directly to the State Board of Equalization." *Ibid.* Those discussions took place in October,

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[2]The named grantor in the special warranty deed of March 31, 2006 was DBI Partners Group, a Nevada limited liability company to which TREH had conveyed the property the day before.

[3]*See* Tenn. Code Ann. section 67-5-201(b). Alas, it turned out that LRP was unable to obtain the required bond financing even before the end of 2006.

2006 – several months **after** the June 14, 2006 deadline for appeal to the county board that was specified in a notice published in the May 21, 2006 edition of the *Lawrence County Advocate.*[4] Affidavit of Barbara Kizer, paragraph 10.

Contending that Lawrence County should not be allowed to reap "unanticipated, un-budgeted windfalls from an inflated $25 million tax appraisal of the Property at LRP's expense" (Petition for Appeal to State Board of Equalization, p. 8), the appellant seeks acceptance of this complaint under the "reasonable cause" provision of Tenn. Code Ann. section 67-5-1412(e). Mr. Lee argued that, as a post-assessment date purchaser, LRP lacks standing to contest the valuation of this property for tax year 2006; and, in any event, that the proof does not establish reasonable cause for the taxpayer's failure to appear before the county board.

Among the duties of the State Board under Tenn. Code Ann. section 67-5-1510(b) are to hear and act on complaints and appeals. Tenn. Code Ann. section 67-5-1412(b)(1) provides, however, that "[t]he taxpayer or owner must first make complaint and appeal to the local board of equalization unless the taxpayer or owner has not been duly notified by the assessor of property of an increase in the taxpayer's or owner's assessment or change in classification as provided for in section 67-5-508." This jurisdictional prerequisite was modified in 1991, when the General Assembly enacted an amendment to Tenn. Code Ann. section 67-5-1412(e) whereby:

> The taxpayer has the right to a hearing and determination to show reasonable cause for the taxpayer's failure to file an appeal as provided in this section and, upon demonstrating such reasonable cause, the board shall accept such appeal from the taxpayer up to March 1 of the year subsequent to the year in which the assessment was made.[5]

Inasmuch as the assessment of the subject property was not changed in 2006, LRP was admittedly not entitled to be sent notice of such assessment under Tenn. Code Ann. section 67-5-508(a)(3). Nor does LRP allege that it received any inaccurate or misleading information regarding its rights to appeal this assessment from a city or county officer or employee. Rather, this direct appeal is mainly predicated on what counsel described as a "collective misunderstanding" on the part of Mr. Brewer and LRP as to the tax status of the subject property in 2006. Mr. Brewer was purportedly acting as "a liaison between officials of city and county government and companies interested in acquiring property, relocating businesses, or taking other actions that might impact the local economy." Affidavit of Randy Brewer, paragraph 2.

The Assessment Appeals Commission, appointed by the State Board pursuant to Tenn. Code Ann. section 67-5-1502, has encountered the "reasonable cause" provision on numerous occasions. In one of the earlier cases involving the statute, the Commission proclaimed that "[a]

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[4]*See* Tenn. Code Ann. section 67-5-508(a)(2).

[5]The deadline for submission of an appeal under this "reasonable cause" amendment was recently clarified by Chapter No. 133 of the Public Acts of 2007.

taxpayer...cannot prevent the imposition of reasonable deadlines for appeal by pleading the press of other business **or lack of awareness of the manner or necessity of appeal**." [Emphasis added.] Transit Plastic Extrusions, Inc. (Lewis County, Tax Years 1990 & 1991, Final Decision and Order, June 29, 1993), p. 2. Similarly, in Associated Pipeline Contractors, Inc. (Williamson County, Tax Year 1992, Final Decision and Order, August 11, 1994), it was held that:

> The deadlines and requirements for appeal are clearly set out in the law, and owners of property are charged with knowledge of them. **It was not the intent of the "reasonable cause" provisions to waive these requirements except where the failure to meet them is due to illness or other circumstance beyond the taxpayer's control**...[Emphasis added.]

Id. at pp. 2—3.

For the most part, the Commission has adhered to these principles. *See*, e.g., ABG Caulking Contractors, Inc. (Davidson County, Tax Year 2004, Final Decision and Order, May 11, 2006). But as stated in Memphis Mall Holdings, LLC (Shelby County, Tax Year 2003, Final Decision and Order, December 22, 2004), the agency "has shown great sensitivity in situations where a taxpayer has been misled, whether intentionally or otherwise, by government officials." *Id.* at p. 3. There, an attorney representing the owner of a large shopping mall attributed his failure to appeal the assessment of the property to the local board of equalization in a non-reappraisal year to "oral representations" of an appraiser (C. Kevin Bokoske) then employed by the Shelby County Property Assessor's office. According to the lawyer's testimony before the Commission, the staff appraiser had told him that "filing an appeal was unnecessary" because the parties had reached an agreement as to the value of the property during the informal review process. *Id.* at p. 2. The Commission determined that counsel had "reasonably relied on Mr. Bokoske's representation that the value would be implemented administratively." *Id.* at p. 3.

In the instant case, on the other hand, it was a self-styled "liaison" who apparently shared LRP's ignorance of the deadline for appeal to the county board and misconception as to the liability of the subject property for taxation in 2006. As a private albeit public-spirited citizen and non-lawyer, Mr. Brewer was surely not under an affirmative duty to advise LRP concerning its legal rights and obligations. In the opinion of the administrative judge, LRP could not reasonably have relied on such an individual for accurate information of that kind – particularly as an investor in a multi-million-dollar property.

The administrative judge also knows of no authority to the effect that the term *reasonable cause* should be more liberally construed in cases where the evidence suggests that the property in question has been substantially overvalued. In ABG Caulking Contractors, Inc., *supra*, for example, a forced assessment of personal property which the taxpayer had neglected to appeal to the county board of equalization was upheld despite the recognition that "the tax consequences of his error are severe." *Id.* at p. 2.

Unpersuaded that the above circumstances amount to reasonable cause for LRP's failure to seek relief before the county board, the administrative judge need not address the standing issue raised by DPA.

Order

It is, therefore, ORDERED that this appeal be dismissed for lack of jurisdiction.

Pursuant to the Uniform Administrative Procedures Act, Tenn. Code Ann. §§ 4-5-301—325, Tenn. Code Ann. § 67-5-1501, and the Rules of Contested Case Procedure of the State Board of Equalization, the parties are advised of the following remedies:

1. A party may appeal this decision and order to the Assessment Appeals Commission pursuant to Tenn. Code Ann. § 67-5-1501 and Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization. Tennessee Code Annotated § 67-5-1501(c) provides that an appeal **"must be filed within thirty (30) days from the date the initial decision is sent."** Rule 0600-1-.12 of the Contested Case Procedures of the State Board of Equalization provides that the appeal be filed with the Executive Secretary of the State Board and that the appeal **"identify the allegedly erroneous finding(s) of fact and/or conclusion(s) of law in the initial order"**; or
2. A party may petition for reconsideration of this decision and order pursuant to Tenn. Code Ann. § 4-5-317 within fifteen (15) days of the entry of the order. The petition for reconsideration must state the specific grounds upon which relief is requested. The filing of a petition for reconsideration is not a prerequisite for seeking administrative or judicial review.

This order does not become final until an official certificate is issued by the Assessment Appeals Commission. Official certificates are normally issued seventy-five (75) days after the entry of the initial decision and order if no party has appealed.

ENTERED this 7th day of September, 2007.

Pete Loesch

PETE LOESCH
ADMINISTRATIVE JUDGE
TENNESSEE DEPARTMENT OF STATE
ADMINISTRATIVE PROCEDURES DIVISION

cc: Samuel B. Zeigler, Attorney, Stites & Harbison, PLLC
Robert T. Lee, General Counsel, Comptroller of the Treasury
Barbara Kizer, Lawrence County Assessor of Property

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